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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,368	12/12/2003	Charles Stanley Aldrich	2003-0377.02	1810

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LEXMARK INTERNATIONAL, INC.
INTELLECTUAL PROPERTY LAW DEPARTMENT
740 WEST NEW CIRCLE ROAD
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LEXINGTON, KY 40550-0999

EXAMINER

FIDLER, SHELBY LEE

ART UNIT	PAPER NUMBER
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2861

MAIL DATE	DELIVERY MODE
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06/08/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/735,368	Applicant(s) ALDRICH ET AL.	
	Examiner Shelby Fidler	Art Unit 2861	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: 7-9, 14, 16, 17.
Claim(s) rejected: 1, 4-6, 10-15 and 18.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicants' arguments filed 5/24/2007 have been fully considered but they are not persuasive. Applicants argue, with respect to claims 1 and 11, that the combination of Kosaka as modified by Niimura does not disclose, teach, or suggest maintenance data being appended to the print data for a particular swath pass for serialization to the printhead. Examiner respectfully disagrees. As set forth in the Office Action dated 1/25/2007, Niimura discloses embedding preliminary discharge data at positions corresponding to preliminary discharge position. Since Kosaka discloses discharge positions (openings 30) on both sides of the printing region, it would have been obvious to a person of ordinary skill in the art to embed the preliminary discharge image data at a position either before the print image data or after the print image data.

Applicants also argue that Niimura's "preliminary discharge image data" should only pertain to discharging ink before printing. Examiner respectfully disagrees. Niimura generically defines a "preliminary discharge operation" as one in which a nozzle forcibly discharges printing material to effect the recovery of failed nozzles (paragraph 2). Further, Niimura discloses that the preliminary discharge image data is embedded at a position that corresponds to the preliminary discharge position (paragraph 47). If preliminary discharge were strictly used before printing, then the preliminary discharge image data would always be embedded at a position before the print image data. However, paragraph 47 of Niimura's disclosure clearly contradicts this line of thought, showing that position of the preliminary discharge image data changes depending on the distance to the nearest preliminary discharge position.

Applicants also argue that there is no desirable reason to combine Kosaka and Niimura. However, as set forth in the Office Action dated 1/25/2007, Niimura's techniques for processing preliminary discharge image data and print image data for nozzle recovery are very efficient. This motivation can be found in paragraph 5 of the disclosure provided by Niimura.

Applicants also argue that neither Kosaka nor Niimura disclose having print data segments, a timing segment, or a maintenance segment. Examiner respectfully disagrees. Throughout the disclosure, Niimura discusses providing print image data to the printhead. As is common knowledge to a person of ordinary skill in the art, print image data contains a plurality of logical bits that define whether or not a specific pixel receives an ink droplet. These bits constitute the claimed "print data segments." Niimura also discloses a segment of preliminary discharge image data (paragraph 47 and Fig. 6), which constitutes the claimed "maintenance segment." Finally, Niimura discloses a segment of NULL data that acts as dummy data between the print image data and the preliminary discharge image data (paragraph 47 and Fig. 6). This NULL data constitutes the claimed "timing segment."

Shelly 2. Folter 6/6/2007



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